

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 In the Matter

5 of Case No.
6 SPIEGEL, INC., 03-11540

7 Debtor.
8 -----x

9 December 19, 2006
10 United States Custom House
11 One Bowling Green
12 New York, New York 10004

13 10th Omnibus Objection; 24th Omnibus Objection; 36th
14 Omnibus Objection.

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B E F O R E:

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HON. BURTON R. LIFLAND,

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U.S. Bankruptcy Judge.

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VERITEXT

212-267-6868

516-608-2400

1 A P P E A R A N C E S:

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3 CHADBOURNE & PARKE LLP

4 Attorneys for the Spiegel Creditor

5 Trust

6 30 Rockefeller Plaza

7 New York, New York 10112

8
9 BY: DOUGLAS E. DEUTSCH, ESQ.

10
11 ALSO PRESENT:

12 JAMES GALLAGHER,

13 Trustee of the Spiegel Creditor Trust

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1 P R O C E E D I N G S:

2 MR. DEUTSCH: Good morning, your Honor.

3 Douglas Deutsch from Chadbourne and Parke on behalf of the
4 Spiegel Creditor Trust. Your Honor, I have with me today
5 James Gallagher, who is the trustee of the Spiegel Creditor
6 Trust.

7 MR. GALLAGHER: Good morning, your Honor.

8 THE COURT: Good morning.

9 MR. DEUTSCH: Your Honor, before I turn to
10 the agenda, we would like to report that at the end of last
11 month the Spiegel creditor trust made an additional
12 distribution, this distribution was of 80 million dollars
13 to the beneficiaries of the Spiegel Creditor Trust. Your
14 Honor, that's on top of the 67 million dollar distributions
15 made last year. That equates to 147 million dollars, or
16 about 11 and a half cents per claimant postpetition from
17 the Spiegel Creditor Trust.

18 Your Honor, we respect to the details of
19 where all the monies came from, substantially they came
20 from our securitization interest. We will come back to
21 your Honor in two months or thereabout with the annual
22 report and provide details on the operations and
23 distributions with respect to the trust, if that's
24 acceptable.

25 THE COURT: Yes, it is. Thank you.

1 MR. DEUTSCH: Your Honor, if I can now turn
2 to the agenda.

3 THE COURT: Go ahead.

4 MR. DEUTSCH: The first item on the agenda,
5 your Honor, is a resolved matter, it is a stipulation that
6 we reached with a landlord called Lanesborough. They filed
7 proof of claim number 4007 for 65 thousand dollars. The
8 claim alleged certain alleged prepetition rent and charges.

16 Your Honor, we have to that settlement to
17 present today, if that's acceptable.

THE COURT: I will entertain it.

19 MR. DEUTSCH: Thank you. Your Honor, the
20 next matter on the agenda is a contested matter. I know
21 that the court has seen some papers with respect to it. It
22 was filed by Ms. Jacqueline Johnson.

23 Ms. Johnson, prepetition, filed a charge of
24 discrimination complaint against Spiegel with two entities,
25 your Honor, the Illinois Department of Human Resources and

1 the Federal Equal Employment Opportunity Commission, the
2 EEOC. Soon after Spiegel filed for bankruptcy. Ms.
3 Johnson filed claim number 4248 for a hundred thousand
4 dollars, and the proof she attached to her claim was a copy
5 of the complaint filed with both Illinois and the EEOC.

6 Following investigation by the State of
7 Illinois in a detailed review, the department dismissed Ms.
8 Johnson's claim because there was no substantial evidence.

9 A copy of the order is attached to the
10 Spiegel creditor trust supplemental statement as Exhibit B.

11 Ms. Johnson subsequently sought to appeal
12 this dismissal by the state, and failed to satisfy all her
13 appeal obligations. Accordingly, the original state order
14 became final and we have provided information with respect
15 to the appeal in Exhibits C, D, E and H of the supplemental
16 statement.

17 About the time we filed our supplemental
18 statement , Ms. Johnson filed a paper to alert the court
19 that her claim with the EEOC was still pending. That was
20 docketed as number 4360. On November 8th, last month, the
21 EEOC also dismissed Ms. Johnson's claim. We provided the
22 court with notice of the dismissal on a filing we made
23 November 28th and attached the EEOC dismissal. We also
24 alerted Ms. Johnson of our intent to move forward with
25 prosecution of the pending objection to this claim.

1 On December 16th Ms. Johnson's filed a
2 response to our notice, or at least sent us a copy of the a
3 response, which we forwarded to the court yesterday. Among
4 other things, Ms. Johnson claimant's not to have received
5 the creditor trust's February 2nd, 2006 supplemental
6 statement. Your Honor, we would just point to Ms.
7 Johnson's response where she actually cites to the
8 supplemental statements of facts.

9 Ms. Johnson also says that she has the
10 right to appeal the EEOC's decision or otherwise prosecute
11 her action with the EEOC. We believe this is not accurate,
12 your Honor. We believe that because Ms. Johnson's claim
13 was based on actions in the State of Illinois, that is, the
14 Department of Human Resource's action and the EEOC action,
15 and that both claims have now been dismissed for lack of
16 substantial evidence, and because the burden is on Ms.
17 Johnson to now demonstrate the validity and amount of her
18 claim and she has failed to do so, we believe that this
19 claim should now be dismissed.

20 Your Honor, we also note that as provided
21 in records set forth in the Illinois Department of Human
22 Rights action, Ms. Johnson has prosecuted at least four
23 different charges of discrimination against Spiegel and
24 that these actions were previously pending before the Human
25 Rights Commission, the Department of Human Rights, the

1 Circuit Court of Cook County, the Appellate Court of
2 Illinois, the U.S. District Court, and the U.S. Court of
3 Appeals for the Second Circuit, we believe that Ms.
4 Johnson's is a pro se, serial litigant who is burdening the
5 court, and that for this reason the claim should also be
6 dismissed.

7 THE COURT: Is Ms. Johnson present?

8 Well, the court has received her response
9 to motion. There is clearly a lack of adhesion with
10 respect to any of the charges both in the Illinois State
11 proceedings and the EEOC, and there's nothing in her papers
12 that have been filed here which demonstrate any validity to
13 her claims, both on the merits and based upon procedural
14 defects. The prior dismissals demonstrate somewhat of a
15 burden with respect to dealing with the complaints.

16 I note she is not here again, and I find it
17 appropriate to dismiss her claim on the merits. Your
18 application is granted.

19 MR. DEUTSCH: Thank you, your Honor. May I
20 present the order at the end?

21 THE COURT: Submit an order.

22 MR. DEUTSCH: Thank you.

23 Finally, your Honor, the last contested
24 matter we have scheduled for today is with respect to a
25 claim filed by the State of Wisconsin.

1 The State of Wisconsin filed a claim on
2 March 14th, 2005 for 48 thousand dollars. Ultimately it
3 was determined, and the State of Wisconsin acknowledged,
4 that the claim related to a future protective audit that
5 Wisconsin was considering performing with respect to
6 certain postpetition tax liabilities.

7 The claim was identified by the debtors in
8 their 36th omnibus objection, and on May 6th, Wisconsin
9 filed a response to the 36th omnibus objection.

Over the last summer, the Spiegel creditor trust contacted Wisconsin and sought to move forward on resolving this claim. We were told that an audit had not yet been performed and might never be performed. To resolve this matter quickly, the Spiegel creditor trust and Eddie Bauer performed an analysis and found that claim 4300 was based on an incorrect assumption made by the State of Wisconsin, and we also created a report using the same form that was previously used by the State of Wisconsin in an audit, and we demonstrated that the liabilities associated with claim 4300 had already been paid.

21 We provided a copy of the report to the
22 State of Wisconsin to at the end of October. Although we
23 requested that they comment on that report, they have never
24 responded. On December 11th we filed a supplemental
25 statement outlining the steps we took and noting our

1 intention to prosecute the claim at this hearing.

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2 So today we seek to move forward on the
3 36th omnibus objection with respect to this claim. We have
4 demonstrated that the claim is invalid because it actually
5 lists the wrong type of tax at issue, and is based on an
6 incorrect assumption that we had demonstrated through the
7 exhibits to our supplemental statement, is improper.

8 As such, your Honor, we would seek that you
9 disallow the claim today.

10 THE COURT: Does anyone want to be heard?

11 Based upon this record, it is clear that
12 the claim was predicated on an audit that was never
13 undertaken, and based upon the facts here, the amount that
14 is set forth in the sales taxes bears no resemblance to any
15 reality or potential liability. Your application is
16 granted.

17 MR. DEUTSCH: May I approach?

18 THE COURT: I'll entertain the orders.

19 MR. DEUTSCH: Thank you, your Honor.

20 THE COURT: I've approved the stipulation
21 on the orders.

22 MR. DEUTSCH: Thank you, your Honor.

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C E R T I F I C A T E

2
3 STATE OF NEW YORK }
4 COUNTY OF WESTCHESTER }

6 I, Denise Nowak, a Shorthand Reporter
7 and Notary Public within and for the State of
8 New York, do hereby certify:

12 I further certify that I am not
13 related, by blood or marriage, to any of the
14 parties in this matter and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this day of , 2007.

DENISE NOWAK

<p>A</p> <p>acceptable 3:24 4:17</p> <p>accurate 6:11</p> <p>acknowledged 8:3</p> <p>action 6:11,14,14,22</p> <p>actions 6:13,24</p> <p>additional 3:11</p> <p>adhesion 7:9</p> <p>agenda 3:10 4:2,4 4:20</p> <p>agreement 4:14</p> <p>ahead 4:3</p> <p>alert 5:18</p> <p>alerted 5:24</p> <p>alleged 4:8,8</p> <p>amount 6:17 9:13</p> <p>analysis 8:15</p> <p>annual 3:21</p> <p>appeal 5:11,13,15 6:10</p> <p>Appeals 7:3</p> <p>Appellate 7:1</p> <p>application 7:18 9:15</p> <p>approach 9:17</p> <p>appropriate 7:17</p> <p>approved 9:20</p> <p>assistance 4:13</p> <p>associated 8:19</p> <p>assumption 8:16 9:6</p> <p>attached 5:4,9,23</p> <p>Attorneys 2:4</p> <p>audit 8:4,12,19 9:12</p> <hr/> <p>B</p> <p>B 1:16 5:10</p> <p>back 3:20</p> <p>bankruptcy 1:1,18 5:2</p> <p>based 6:13 7:13 8:16 9:5,11,13</p> <p>Bauer 8:15</p> <p>bears 9:14</p> <p>behalf 3:3</p> <p>believe 6:11,12,18 7:3</p>	<p>beneficiaries 3:13</p> <p>blood 10:13</p> <p>Bowling 1:10</p> <p>burden 6:16 7:15</p> <p>burdening 7:4</p> <p>BURTON 1:17</p> <hr/> <p>C</p> <p>C 2:1 3:1 5:15 10:1,1</p> <p>called 4:6</p> <p>Case 1:5</p> <p>cents 3:16</p> <p>certain 4:8 8:6</p> <p>certify 10:8,12</p> <p>Chadbourne 2:3 3:3</p> <p>charge 4:23</p> <p>charges 4:8 6:23 7:10</p> <p>Circuit 7:1,3</p> <p>cites 6:7</p> <p>claim 4:7,8,9,12,15 5:3,4,8,19,21,25 6:12,18,19 7:5,17 7:25 8:1,4,7,12,15 8:20 9:1,3,4,9,12</p> <p>claimant 3:16</p> <p>claimant's 6:4</p> <p>claims 6:15 7:13</p> <p>clear 9:11</p> <p>clearly 7:9</p> <p>come 3:20</p> <p>comment 8:23</p> <p>Commission 5:1 6:25</p> <p>complaint 4:24 5:5</p> <p>complaints 7:15</p> <p>considering 8:5</p> <p>consultant 4:13</p> <p>contacted 8:11</p> <p>contested 4:20 7:23</p> <p>Cook 7:1</p> <p>copy 5:4,9 6:2 8:21</p> <p>County 7:1 10:4</p> <p>court 1:1 3:8,25 4:3 4:18,21 5:18,22 6:3 7:1,1,2,2,5,7,8</p>	<p>7:21 9:10,18,20</p> <p>created 8:17</p> <p>creditor 2:4,12 3:4,5 3:11,13,17 4:11 5:10 6:5 8:10,14</p> <p>Custom 1:10</p> <hr/> <p>D</p> <p>D 3:1 5:15</p> <p>day 10:17</p> <p>dealing 7:15</p> <p>Debtor 1:7</p> <p>debtors 4:9,12 8:7</p> <p>December 1:9 6:1 8:24</p> <p>decision 6:10</p> <p>defects 7:14</p> <p>demonstrate 6:17 7:12,14</p> <p>demonstrated 8:19 9:4,6</p> <p>Denise 10:6,19</p> <p>department 4:25 5:7 6:14,21,25</p> <p>detailed 5:7</p> <p>details 3:18,22</p> <p>determined 8:3</p> <p>Deutsch 2:6 3:2,3,9 4:1,4,19 7:19,22 9:17,19,22</p> <p>different 6:23</p> <p>disallow 9:9</p> <p>discrimination 4:24 6:23</p> <p>discussions 4:14</p> <p>dismiss 7:17</p> <p>dismissal 5:12,22,23</p> <p>dismissals 7:14</p> <p>dismissed 5:7,21 6:15,19 7:6</p> <p>distribution 3:12,12</p> <p>distributions 3:14 3:23</p> <p>District 1:2 7:2</p> <p>docketed 5:20</p> <p>dollar 3:14</p>	<p>dollars 3:12,15 4:7 4:15 5:4 8:2</p> <p>Douglas 2:6 3:3</p> <hr/> <p>E</p> <p>E 1:16,16 2:1,1,6,9,9 3:1,1 5:15 10:1,1</p> <p>Eddie 8:15</p> <p>EEOC 5:2,5,19,21 5:23 6:11,14 7:11</p> <p>EEOC's 6:10</p> <p>Employment 5:1</p> <p>entertain 4:18 9:18</p> <p>entities 4:24</p> <p>entitled 10:10</p> <p>Equal 5:1</p> <p>equates 3:15</p> <p>ESQ 2:6</p> <p>estate 4:13</p> <p>evidence 5:8 6:16</p> <p>Exhibit 5:10</p> <p>exhibits 5:15 9:7</p> <hr/> <p>F</p> <p>F 1:16 10:1</p> <p>facts 6:8 9:13</p> <p>failed 5:12 6:18</p> <p>February 6:5</p> <p>Federal 5:1</p> <p>filed 4:6,10,22,23 5:2,3,5,17,18 6:1 7:12,25 8:1,9,24</p> <p>filings 5:22</p> <p>final 5:14</p> <p>Finally 7:23</p> <p>find 7:16</p> <p>first 4:4</p> <p>Following 5:6</p> <p>form 8:17</p> <p>forth 6:21 9:14</p> <p>forward 5:24 8:11 9:2</p> <p>forwarded 6:3</p> <p>found 8:15</p> <p>four 6:22</p> <p>further 10:12</p> <p>future 8:4</p>
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